

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

T & H BAIL BONDS, ET AL.	:	CIVIL ACTION
	:	
Plaintiffs	:	NO. 04-1290
	:	(Judge Robinson)
v.	:	
	:	
LOCAL 199, LABORERS	:	
INTERNATIONAL UNION OF	:	
NORTH AMERICA, ET AL.	:	
	:	
Defendants	:	

**DEFENDANTS' STATEMENT OF MATERIAL FACTS
AND LEGAL ISSUES UPON WHICH JUDGMENT IS SOUGHT**

Pursuant to this Court's Order of February 13, 2008, moving parties, Local 199, Laborers International Union of North America, et al., hereby file their statement of the material facts as to which they contend there is no genuine issue to be tried and the legal issues upon which judgment is sought.

Uncontested Facts

1. Plaintiffs are T & H Bail Bonds, Inc., a corporation located at 623 King Street, Wilmington, Delaware and 307 State Street, Dover, Delaware, and its President, Ted Pridgen.
2. Defendants are Local 199, Laborers International Union of North America (hereinafter "the Union"), and two of its officers.
3. Beginning on September 14, 2004, the Union began to protest at plaintiffs' Wilmington location the use of nonunion labor elsewhere by a company called LCC.
4. The protest involved picketing, the use of a large, inflatable rat and the distribution of handbills.

5. On September 22, 2004, the Union filed an unfair labor practice charge with the National Labor Relations Board in Philadelphia, Pennsylvania.

6. On March 13, 2006, the Union withdrew those charges.

7. Count I of plaintiffs' Complaint is styled "Interference with Trade," and alleges that the defendants engaged in picketing at their business location, distributed "misleading" flyers (handbilled) and utilized an inflated "giant rat" "regarding the use of non-union labor," which activity "is designed to cause economic harm" to the plaintiffs, "is causing safety concerns to Plaintiff and his customers" and is "causing potential customers to go elsewhere for bail bonds."

Legal Issues Upon Which Judgment is Sought (Count I)

8. In that the conduct of which plaintiffs complain is either actually or at least arguably protected or prohibited by the National Labor Relations Act, 29 U.S.C. §151, *et seq.*, and is not a merely peripheral concern of that Act nor deals with interests deeply rooted in local feeling and responsibility, plaintiffs' claims are preempted by that law and the NLRB's administration of it.

9. Thus, if the Union directed its protest against LCC at plaintiffs' Wilmington location, and plaintiffs had no connection with LCC, the Union's conduct was at least arguably secondary in nature and therefore arguably in violation of Section 8(b)(4)(i)(ii)(B) of the Labor Management Relations Act, 29 U.S.C. §158(b)(4)(i)(ii)(B).

10. That being the case, plaintiffs' state-law claims as set forth in Count I of their Complaint are totally preempted.

Respectfully submitted,

/s/ Joseph J. Rhoades

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DATE: February 29, 2008

CERTIFICATE OF SERVICE

I, Carol McCool, Legal Assistant, hereby certify that on this 29th day of February, 2008, I caused to be served upon plaintiffs' counsel two true and correct copies of Defendants' Statement of Material Facts and Legal Issues Upon Which Judgment is Sought by First Class U.S. Mail to the following address:

John F. Brady, Esquire
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/s/Carol McCool

Carol McCool